

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #        Adoption Assistance Program (AAP) Regulation Revisions

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held February 16, 2011, as follows:

February 16, 2011  
Office Building # 8  
744 P Street  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on February 16, 2011.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

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## CHAPTERS

California Code of Regulations, Title 22, Division 2, Chapter 3, Sections 35000 (Definitions), 35325 (Request for Adoption Assistance), 35326 (AAP Eligibility), 35327 (Search for Parents not Requiring Adoption Assistance), 35329 (Effect of Adoptive Parent's Legal Residence), 35331 (Documentation of Child's Eligibility), 35333 (Determination of Amount and Duration of AAP Benefit for all Children), 35334 (Determination of Amount and Duration of AAP Benefit for a Child in Temporary Out-Of-Home Placement), 35337 (Content of the Adoption Assistance Agreement), 35339 (Deferred Payment of AAP), 35341 (Procedures for Initiation of Payment), 35343 (Procedures for Reassessment of the Child's Needs), 35344 (Procedures for Identification and Recovery of Overpayments), 35345 (When Notice of Action is Required), 35347 (Statutory Provisions of AAC), 35351 (Maintenance of Separate Records), 35352 (Notification Requirements for Agencies), 35352.1 (Eligibility for Reimbursement), 35352.2 (Authorization for Reimbursement), and 35352.3 (Agency Requirements for Reimbursements). California Department of Social Services, Manual of Policies and Procedures, Sections 45-801 (Definitions), 45-802 (AAP Eligibility), 45-803 (County of Responsibility), 45-804 (Payment), 45-805 (Recertification of Eligibility), 45-806 (Notice of Action), and 45-807 (Maintenance of Case Record).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing regulations provide for the county and California Department of Social Services (CDSS) Adoptions District Offices administration of the Adoption Assistance Program (AAP). Federal subsidies were created by Congress (through Public Law 96-272 – the Adoption Assistance and Child Welfare Act of 1980) to encourage the adoption of special needs children and remove the financial disincentives for families to adopt. Recognizing that adoptive parents often experience financial difficulty meeting the special needs of children who formerly were placed in California's foster care system, the state legislature created AAP. In creating the program, the legislature intended to benefit children in foster care by providing the security and stability of a permanent home through adoption. Children may receive a federally funded subsidy under Title IV-E or a state-funded subsidy per state guidelines.

Due to public and congressional inquiries, the Administration of Children Youth and Families (ACYF) reviewed States' respective Title IV-E Plans and concluded each States' AAP was implemented in a different manner and was inconsistent with the federal requirements. As a result of the federal review, California submitted a request to amend its Title IV-E State Plan to ACYF, in May 2007 and June 2007. The request was in response to the following program instructions (PI): ACYF-CB-PI-06-06 regarding changes made to the Social Security Act (SSA) by the Deficit Reduction Act of 2005 (DRA); ACYF-CB-PI-07-02 regarding changes made to the SSA by the Fair Access Foster Care Act of 2005, the Safe and Timely Interstate Placement of Foster Children Act of 2006, the Adam Walsh Child Protection and Safety Act of 2006; and ACYF-CB-PI-07-04 regarding the changes made by the Tax Relief and Health Care Act of 2006. In May 2008, ACYF requested the state submit a Program Improvement Plan (PIP) specific to AAP. The development of the AAP PIP was based on inquiries and discussions among CDSS staff and Region IX staff. The AAP PIP includes amendments to AAP statutes, regulations and policies and forms. The AAP PIP was approved in June 2009 and is to be completed by December 2010. The outstanding items to be completed per the PIP are the revisions of the Title 22, Division 2, Chapter 3. Adoption Program Regulations; Subchapter 7. Adoption Assistance Program/Aid for the Adoption of Children (AAP/AAC).

Assembly Bill (AB) 4 (Chapter 4, Statutes of 2009), AB 1325 (Chapter 287, Statutes of 2009), and Senate Bill 597 (Chapter 339, Statutes of 2009) mandated CDSS to amend AAP related regulations. As authorized by Welfare and Institutions Code Sections 12300(b), 10553 and 10554, the proposed regulations make changes to current provisions for clarity and consistency purposes and to more clearly express current policy specific to: AAP eligibility; AAP payment amounts; agreements; AAP reassessments; and nonrecurring adoption expenses.

#### **COST ESTIMATE**

1. Costs or Savings to State Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.
4. Federal Funding to State Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current laws and regulations.

#### **LOCAL MANDATE STATEMENT**

These regulations do impose a mandate upon local agencies but not upon school districts. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations will, if anything, result in negligible costs.

#### **STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### **STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **SMALL BUSINESS IMPACT STATEMENT**

CDSS has determined that there is an impact on small businesses as a result of filing these regulations because these regulations also apply to licensed adoption agencies who are required to: 1.) provide information on the availability of mental health services for Adoption Assistance Program (AAP) eligible children to the prospective adoptive family; 2.) inform the prospective adoptive family that they will continue to receive AAP benefits in the agreed upon amount; 3.) provide written information about the AAP to a prospective adoptive family at the time of application and once again immediately prior to the finalization of the adoption; and 4.) encourage a prospective adoptive family to sign a deferred adoption agreement if they elect not to receive AAP benefits at the time of adoptive placement.

#### ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

#### STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

#### STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

#### AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553, 10554, and 16118(a). Subject regulations implement and make specific Welfare and Institutions Code Sections 16118, 16119, 16120, 16120.1, 16121, and 16121.05; 42 United States Code Sections 671 and 673; and 45 Code of Federal Regulations 1356.40 and 1356.41.

#### CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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